IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

:: JUDGMENT ::

Rajasthan State Road Transport Corporation Vs. Smt. Himmat & Ors.

S.B. CIVIL MISC. APPEAL No.158/1993.

Against the award dated 15.07.1992 made by the Motor Accidents Claims Tribunal, Dungarpur in Claim Case No.35/1986.

Date of Judgment :: 3rd January 2007.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. B.S. Bhati, for the appellants.
Mr. Jitendra Singh, for the respondents.

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BY THE COURT:

This appeal has been submitted by the owner of the vehicle involved in accident against the award dated 15.07.1992 made by the Motor Accidents Claims Tribunal, Dungarpur in Claim Case No.35/1987 whereby compensation has been awarded to the wife, two daughters, mother and step-mother of vehicular accident victim Kalu, about 40½ years in age, against the non-applicants in the sum of Rs.3,82,000/- together with pendent lite interest @ 9% per annum and post award interest @ 12% per annum.

On 08.02.1986 at about 5:00 p.m. at some distance from Sagwara bus stand, the victim Kalu while riding his motorcycle bearing registration No. RSG 6473 coming from Galiakote to Sagwara sustained grievous injuries on being hit by an oncoming bus bearing registration No. RRG 6802 driven by the non-applicant No.2 Nirbhay Singh and belonging to the present appellant, Rajasthan State Road Transport Corporation; and succumbed to the injuries.

While narrating the incident aforesaid, the claimants claimed compensation with the submissions that the deceased was engaged in service in Kuwait; he had come for sometime and was to go back to Kuwait and had with him return ticket of 13.02.1986; that he had visa valid upto 04.09.1986 and would have got it extended. The claimants submitted that the deceased was earning about Rs.7,000/- per month in Kuwait and after spending Rs. 3,000/- upon himself, was sending to the family Rs.4,000/- per month and such income he would have earned for next 25 years. Stating pecuniary and non-pecuniary losses, the claimants sought compensation in the sum of Rs.12,25,000/-.

In their joint reply to the claim application, the non-applicants admitted the occurrence but alleged it to be the result of negligence of the deceased motorcyclist by hitting

against the bus. Relationship of the applicants with the deceased was denied for want of knowledge but it was asserted that the deceased was about 50-52 years of age. It was maintained that the bus was at a very slow speed and was moving on its correct side and the motorcyclist hit on the wrong side. The quantum of compensation was also put to contention.

After framing necessary issues and taking the evidence produced by the parties where the claimants, apart from production of documentary evidence, examined AW-1 Smt. Himmat (claimant No.1) and two alleged eye-witnesses to the accident, AW-2 Nathu Lal and AW-3 Kachru; and where the bus driver Nirbhay Singh was examined as NAW-1, the Tribunal proceeded to determine the questions involved in the case in its impugned award dated 15.07.1992.

For the responsibility towards accident, the claimants relied upon the testimony of AW-2 Nathu Lal and AW-3 Kachru whose statements were questioned by the non-applicants with the submissions that they were not cited as prosecution witnesses in the related criminal case. The Tribunal referred to the statement of AW-2 Nathu Lal who asserted that despite his request, the police did not cite him as a witness; and also referred to the fact that the brother of the bus driver was working with the Deputy Superintendent of Police and another relative of the bus driver was posted as

Assistant Sub-Inspector at Police Station, Sagwara. The Tribunal also referred to the photographs Ex.4 and 5 showing the marks available on the bus on its front corner at the driver's side and the fact that a shoe of the victim was visible under the rear wheel of the bus. The Tribunal also referred to the site inspection memo and the site plan and found that the bus was on the wrong side at the time of accident and then was taken towards its left. The Tribunal also referred to the report by Constable Ram Lal Ex.7 stating that the accident was caused by rash and negligent driving of the bus driver by hitting the motorcyclist. On thorough appreciation of the evidence on record, the Tribunal formed the opinion that the accident occurred for the negligence of the bus driver and held the non-applicants liable for compensation.

After finding that the claimants were entitled for compensation as the heirs of the deceased, the Tribunal proceeded to quantify compensation in issue No.3. The Tribunal referred to the testimony of AW-1 Smt.Himmat, wife of the victim, and to the passport of the deceased (Ex.3) and the bank account pass-book (Ex.1) of Smt. Himmat showing various transactions of substantial amounts. In view of the age of the victim at about 40 years the Tribunal assumed that he was likely to earn for three years more in Kuwait. The Tribunal put an estimate on the income of the deceased at about

Rs.5,000/- per month during this period and contribution to the claimants at Rs.3,000/- per month and calculated loss for these three expected years of service in Kuwait at Rs.1,08,000/-. The Tribunal put a further estimate on the likely income of the deceased after coming back from Kuwait at Rs.2,000/- per month and contribution to the claimants at Rs.1,500/- per month and capitalised this figure of Rs.1,500/- per month for 18 years in the sum of Rs.3,24,000/-. Summing up the estimated loss during the expected tenure in Kuwait and then estimated earning back home, the Tribunal took total loss at Rs.4,32,000/- (Rs.1,08,000/- + Rs.3,24,000/-) and then deducted 20% on account of lump sum payment and thus calculated allowable pecuniary loss for the claimants at Rs.3,45,600/-. The Tribunal further allowed Rs.15,000/- to the wife of the deceased towards loss of consortium; Rs.10,000/- to the minor daughter of the deceased towards loss of love and affection of father; and Rs.5,000/- to the married daughter of the deceased and further Rs.5,000/- to the mother of the deceased and Rs.2,000/- to the step-mother of the deceased for loss of his services. In this manner, the Tribunal arrived at a figure of Rs.3,82,000/- to be awarded as compensation to the claimants. The Tribunal allowed interest @ 9% per annum from the date of filing of the claim application until the date of award and @ 12% per annum from the date of award until payment.

Assailing the award aforesaid, it has been strenuously contended on behalf of the appellant that the accident was brought about by the negligence of the deceased himself and at any rate it were a case of contributory negligence; that the Tribunal has erred in relying upon testimony of AW-2 Nathu Lal and AW-3 Kachru who were not cited as police witnesses and whose testimony is not worth reliance; that the scene of accident makes it clear that the motorcyclist while climbing up a slope at a brisk speed hit against the driver side of the oncoming bus for his own fault; that the Tribunal has seriously erred in estimating income of the deceased on mere conjectures and in making award at a highly exorbitant figure by application of multiplier of 3 for Kuwait services and then another multiplier of 18 for further loss of income that ultimately amounts to applying a multiplier of 21 and cannot be countenanced; that the deceased was not more than an unskilled painter and could not have earned more than Rs.700-800 per month; that the award of interest @ 9% per annum from the date of claim application and then @ 12% per annum from the date of award remains highly excessive. The claimants-respondents on the other hand, have duly supported the impugned award.

It may be pointed out that before the record of the

Tribunal pertaining to the claim case was transmitted to this Court, part 'D' 'C' and 'B' thereof had already been weeded out. Learned counsel for the parties were requested to supply copies of statements and documentary evidence as available with them. The appellant has supplied typed copies of the statements of witnesses. Bank Account Pass-book of the deceased and his wife, Ex. 1 and 2, Passport of the deceased, Ex.3 and the photographs Ex.4 to 6 in original are of course available on record.

Submission made by the parties have been given thoughtful consideration and the material as available on record has been examined.

So far the finding on responsibility towards accident is concerned, having examined photographs Ex. 4 to 6 available on record, this Court is of opinion that the deduction drawn by the Tribunal remains just and proper. It seems that the corner of the driver side of the bus hit the motorcycle; a shoe is definitely visible under the rear wheel of the bus; and the bus has definitely travelled further after hitting the motorcycle before coming to halt. The statement of the bus driver Nirbhay Singh is indicative of his attempt to avoid stating the facts clearly. He has admitted his brother Surendra Singh working in the office of Deputy Superintendent of Police and has admitted Moti Singh being ASI at Police Station, Sagwara but on his relationship

with Moti Singh has stated that he was not aware about the relationship but there could be some old relationship. The bus driver has alleged that immediately upon the occurrence, he halted the bus and went straight to Police Station and that he did not even verify if the motorcyclist was alive or dead. He allegedly did not even examine his own vehicle. According to this bus driver, NAW-1 Nirbhay Singh,-

> "मैंने गाड़ी का बम्पर नहीं देखा था कि वह दबा हुआ था या नहीं । मैंने गाड़ी पर दाहिनी तरफ लाईट के पास खून के दाग लगे हो तो, नहीं देखे थे, क्योंकि मैंने गाड़ी देखी ही नहीं थी । एक्सीडेण्ट होते ही मैं तो तत्काल ही उतर कर रवाना हो गया । मैंने तो यह भी पता नहीं लगाया कि कालू मर गया है या जिन्दा है । मैं तो उतरते ही थाने में चला गया था ।"

Taking the statement so made by the bus driver on its face value, if he in fact acted in the manner stated then, either he was extremely insensitive or he was absolutely sure of having killed the man.

At the place of incident where the road level was different for the two vehicles and the motorcycle was climbing up, the bus driver being on a higher road level and further with his elevated seat was definitely in a better position not only to spot the motorcycle but to take necessary steps to avoid the mishap if he was taking the bus at a reasonable speed in his

control and was conscious of his duty to take reasonable care and caution. Having regard to the nature of incident, omission of care on the part of the bus driver is rather apparent. The distance covered by the bus after the incident is definitely indicative of its brisk speed. In the totality of facts, the view taken by the Tribunal on the responsibility towards accident cannot be said to be unreasonable and there appears no perversity calling for interference by the appellate court. The non-applicants remain liable for compensation.

So far quantum of compensation is concerned, in the overall analysis the award in question remains diminutively moderate and in any case is not excessive so as to warrant interference in appeal. The deceased was about 40½ years in age. It is clearly borne out from the endorsements made on his passport Ex. 3 that the same was issued on 27.08.1976 and was renewed twice with final renewal extending its validity until 26.08.1986; that emigration formalities were completed on 20.07.1979 for employment in Kuwait; that the deceased had been to Kuwait and arrived at Bombay on 25.02.1982 and on 26.07.1985. It has not been shown that the family had any other source of income except that earned by the deceased. The claimants asserted the income of the deceased at Rs. 7,000/- in the claim application whereas AW-1 Smt. Himmat asserted his contribution at Rs. 7,000/- with earnings of about Rs. 10,000/-

per month. She has also pointed out the extensive expenditures made by the deceased on the family including those for the marriage of a daughter and on pilgrimage. However, for want of other documentary proof on record, the Tribunal has dealt with the fact situation of the present case in the manner that the expected service tenure of the deceased in the foreign country has been taken for another 3 years and loss of contribution for this period at Rs. 3,000/- per month with estimated earning at Rs. 5,000/- per month. The Tribunal has taken this loss for all the three years of expected service tenure at Rs. 1,08,000/-. The Tribunal has estimated the earnings of the deceased thereafter only at Rs. 2,000/- per month and contribution to the claimants at Rs. 1,500/- per month, i.e. Rs. 18,000/- per annum and has capitalized with a multiplier of 18. Though it might appear that the assessment with such break up ultimately amounts to application of excessive multiplier of 21 (3+18) when the age of the deceased was above 40 years; but the very fact that the tribunal has taken expected earning of the deceased after three years at less than half of his expected earning from his foreign job shows that the multiplicand itself has been adopted much on the lower side. There is nothing on record to assume that the contribution by the deceased to the family would have come down to half on his returning back to India. Viewed in the light of the fact that the multiplicand itself

has been deficient in comparison to the reasonable earning prospects of the deceased, the award does not appear excessive. Moreover, the Tribunal has proceeded to reduce the estimated loss by 20% in the name of lump sum payment. Such deduction cannot be approved being unnecessary and in the fact situation of the present case, such deduction has resulted in reducing the award rather towards inadequacy. The ultimate figure of pecuniary loss assessed by the Tribunal at Rs. 3,45,000/- remains on the lower side if not too insufficient.

` Matter could be viewed from other angle. The fact remains that last known earning of the deceased has been from a job in Kuwait; and in view of unrebutted testimony of the wife of the deceased about the expenditure made by him, in any case average contribution by the deceased at Rs. 3,000/- per month could be adopted as a fair estimate towards loss of dependany leading to multiplicand of Rs. 36,000/- per annum. Then, application of even a lower side multiplier only of 13 would lead to pecuniary loss at Rs. 4,68,000/-.

Matter could be viewed from yet another angle. Even if it be taken that the deceased was earning as a painter and average contribution is taken only at about Rs. 2,000/- per month and a multiplier of 15 is applied with reference to Second Schedule to the Act to the multiplicand of Rs. 24,000/- per annum, still the pecuniary loss stands at Rs. 3,60,000/-.

Thus, even on a conservative estimate the quantification as made by the Tribunal does not appear excessive; and rather appears on the lower side. There is no such element of excessiveness in non-pecuniary loss figures either that could be leading to exorbitant award. Quantum of compensation awarded calls for no interference.

In the award made in the year 1992, allowing interest @ 9% per annum cannot be said to be excessive in view of the then prevalent interest rates. However, when the Tribunal has exercised its discretion in awarding interest at the rate of 9% per annum from the date of filing of claim application, enhancement of such rate of interest at 12% per annum from the date of award does not appear proper nor there appears any reason or justification for such different interest rates; one applicable from the date of application and another from the date of award. Therefore, though the award of compensation otherwise deserves to be upheld but the stipulation regarding enhanced rate of interest from the date of award deserve to annulled.

As a result of the aforesaid, this appeal succeeds to the extent indicated above and is partly allowed; the award of compensation made by the Tribunal in favour of the claimants is affirmed subject to the modification that the stipulation regarding awarding of interest @ 12% per annum from the date

of award is set aside and instead, the claimants shall be entitled to interest @ 9% per annum from the date of filing of claim application till the date of payment.

It shall be required of the appellant to deposit the remaining amount payable under the modified award within 30 days from today with the Tribunal that shall be apportioned and disbursed by the Tribunal as contemplated under the impugned award. Parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI), J.

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